

Supreme Court, U.S.
FILED

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NO.

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IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM D. MORRIS,
Petitioner

v.

DONALD H. RUMSFELD,
Secretary of Defense,
Respondent

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Where a federal employee has prevailed on his discrimination claim before the EEOC and he is only dissatisfied with the amount of compensatory damages received, may he bring proceedings in the District Court asking for a trial de novo limited solely to damages, or must the parties also relitigate the issue of the employer's liability as well?

LIST OF PARTIES

The parties to this proceeding were Petitioner William D. Morris and Donald H. Rumsfeld, Secretary of Defense.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED	i
PARTIES TO PROCEEDING	ii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF BASIS OF JURISDICTION	1
CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASON FOR GRANTING WRIT A Writ of Certiorari Should Be Granted To Resolve a Split Between the Circuits	7
CONCLUSION	16
OPINION AND JUDGMENT OF THE COURT OF APPEALS	APPENDIX "A"
ORDER OF THE COURT OF APPEALS DENYING REHEARING	APPENDIX "B"
OPINION AND ORDER OF THE DISTRICT COURT GRANTING PETITIONER'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY	APPENDIX "C"

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
Alexander v. Gardner-Denver Co., 415 U.S. 36, 94 S.Ct. 1011, 89 L.Ed. 2d 147 (1974)	14
Chandler v. Roudebush, 425 U.S. 840, 96 S.Ct. 1949, 48 L.Ed. 2d 416 (1976)	8
Girard v. Rubin, 62 F. 3 rd 1244 (9 th Cir. 1995)	4
Haskins v. United States Department of the Army, 808 F. 2d 1192 (6 th Cir. 1987)	4
Morris v. Rice, 985 F. 2d 143 (4 th Cir. 1993)	4
Morris v. Rumsfeld, 420 F. 287 (3 rd Cir. 2005)	1, 8
Moore v. Devine, 780 F. 2d 1559 (11 th Cir. 1986)	4, 8, 10, 16
Pecker v. Heckler, 801 F. 2d 709 (4 th Cir. 1986)	4
Scott v. Johanns, 409 F. 3 rd 466 (D.C. Cir. 2005)	8
Timmons v. White, 314 F. 3 rd 1229 (10 th Cir. 2003)	8

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
West v. Gibson, 527 U.S. 212, 119 S.Ct. 1906, 144 L.Ed.2d 196 (1998)	7, 11, 12, 13, 14

Yamaguchi v. United States Department of the Airforce, 109 F. 3 rd 1475 (9 th Cir. 1997)	4
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STATUTES AND OTHER AUTHORITIES

28 U.S.C. §1254(1)	1
28 U.S.C. §1331	7
29 U.S.C. §794a(a)(1)	2, 7
42 U.S.C. §1981a	11
42 U.S.C. §1981a(a)(1)	3
42 U.S.C. §1981a(c)	3, 12
42 U.S.C. §2000e-5(f)(3)	7
42 U.S.C. §2000e-16	11
42 U.S.C. §2000e-16(b)	2
42 U.S.C. §2000e-16(c)	2, 8, 16

29 C.F.R. §1614.502(a)	3
29 C.F.R. §1614.502(c)	3
Fed. R. Evid. 803 (8)(c)	14

**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR A WRIT OF CERTIORARI

Petitioner William D. Morris respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit entered in the above captioned proceeding on August 22, 2005. On October 3, 2005 said Court of Appeals denied Petitioner's request for a rehearing.

OPINIONS BELOW

The Judgment and Opinion of the Court of Appeals for the Third Circuit, dated August 22, 2005, reversing the decision of the District Court that granted Partial Summary Judgment to Petitioner on the issue of liability has been reported at 420 F. 3rd 287 (3rd Cir. 2005). It is reproduced in Appendix "A" hereto.

The Order of the Court of Appeals for the Third Circuit dated October 3, 2005, denying Rehearing has not been reported. It is reproduced in Appendix "B" hereto.

The Memorandum and Order of the District Court, dated September 9, 2003, granting Petitioner's Motion for Partial Summary Judgment on the issue of liability has not been reported. It is reproduced in Appendix "C" hereto.

STATEMENT OF BASIS OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

**CONSTITUTIONAL, STATUTORY AND
REGULATORY
PROVISIONS INVOLVED**

29 U.S.C. §794a(a)(1)

The remedies, procedures and rights set forth in Section 717 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-16) including the application of sections 706(f) through 706(k) (42 U.S.C. §2000e-5(f) through (k), shall be available, with respect to any complaint under section 791 of this title [employment of individuals with disabilities in the Federal Government] to any employee or applicant aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. * * * *

42 U.S.C. §2000e-16(b)

[T]he Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section [non-discrimination in Federal employment] through appropriate remedies. . . that will effectuate the policies of this section, and shall issue such rules, regulations, orders, and instructions as is deemed necessary and appropriate to carry out its responsibilities under this section. * * * *

42 U.S.C. §2000e-16(c)

[After an Agency or the Equal Employment Opportunity Commission takes final action on a complaint or fails to take action within a certain time] an employee or applicant for employment. . . may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the [Agency] shall be the defendant.

42 U.S.C. §1981a(a)(1)

In any action brought under section 717 of the Civil Rights Act of 1964 [42 U.S.C. §2000e-16] against a respondent who has engaged in unlawful intentional discrimination. . . the complaining party may recover compensatory . . . damages . . .

42 U.S.C. §1981a(c)

If a complaining party seeks compensatory . . . damages under this section . . . any party may demand a trial by jury. . .

29 C.F.R. §1614.502(a)

Relief ordered in a final Commission decision is mandatory and binding on the agency. . .

29 C.F.R. §1614.502(c)

When no request for reconsideration [of a Commission decision] is filed or when a request for reconsideration is denied the agency shall provide the relief ordered and there is no further right to delay implementation of the ordered relief.

STATEMENT OF THE CASE

Petitioner seeks review of a ruling of the Third Circuit Court of Appeals which held that where a federal employee has prevailed on his discrimination claim before the EEOC and he is dissatisfied only with the amount of compensatory damages received; should he bring proceedings in the District Court seeking a trial de novo on damages, he must retry the issue of the employer's liability as well.

The Third Circuit's decision is in conflict with decisions of other Circuits which have held that federal employees may seek de novo review of the adequacy of a remedy without subjecting a factual finding by the EEOC of discrimination to de novo determination. See Morris v. Rice, 985 F. 2d 143, 145-46 (4th Cir. 1993); Pecker v. Heckler, 801 F. 2d 709, 711 f.n. 3 (4th Cir. 1986); Haskins v. United States Department of the Army, 808 F. 2d 1192, 1199 (6th Cir. 1987); Girard v. Rubin, 62 F. 3rd 1244, 1247 (9th Cir. 1995); Yamaguchi v. United States Department of the Airforce, 109 F. 3rd 1475, 1484 f.n. 2 (9th Cir. 1997); and Moore v. Devine, 780 F. 2d 1559, 1562-63 (11th Cir. 1986)

This employment discrimination case was brought under the Rehabilitation Act, 29 U.S.C. §791 et seq.

At the conclusion of the time allowed by the Court for discovery, Mr. Morris filed a Motion for Partial Summary Judgment on Count 1 of his Amended Complaint asking the District Court to rule that the Agency was bound by an EEOC finding of liability.

Complying with local rule (LR 56.1), Mr. Morris submitted a Statement of Material Facts in support of his Motion for Partial Summary Judgment. The Agency did not contest that Statement. Those "facts" admitted included the following:

1. At all times material to Count I of Plaintiff's Amended Complaint, Plaintiff William Morris was employed as a WG5 Warehouse Worker (Fork Lift Operator) by the Defense Logistics Agency.
2. The Defense Logistics Agency is an agency of the United States Department of Defense.

3. On or about August 25, 1992, Plaintiff Morris filed a formal EEO Complaint against the Defense Logistics Agency.

4. On November 27, 1995, after a hearing, an Administrative Judge of the Equal Employment Opportunity Commission issued a recommended decision finding that Plaintiff Morris was a 'qualified individual with a disability'; and that the Defense Logistics Agency 'intentionally discriminated' against him between February 27, 1992 and April 11, 1992, by failing to make any attempts to accommodate Plaintiff's medical restrictions by considering his reassignment to an office job, in spite of Plaintiff's repeated requests. However, the Administrative Judge also found that the Defense Logistics Agency did not discriminate against Plaintiff after April 11, 1992.

5. In relevant part, the recommended decision of the Administrative Judge recommended that Plaintiff Morris receive compensatory damages for a back injury that he sustained on April 11, 1992.

6. On February 5, 1995 the Defense Logistics Agency issued a Final Agency Decision accepting the Administrative Judge's recommended finding of no discrimination after April 11, 1992 and rejecting her recommended finding of intentional discrimination between February 27, 1992 and April 11, 1992.

7. Plaintiff Morris timely appealed the Final Agency Decision of the Defense Logistics Agency to the Equal Employment Opportunity Commission.

8. On October 1, 1998, the Equal Employment Opportunity Commission issued a Decision, which, in relevant part, reversed the Final Agency Decision insofar as it rejected the Administrative Judge's finding of intentional